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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-838

JOHN D. PAGE and DON THOMAS,
Petitioners

v.

U. S. INDUSTRIES, INC.,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONERS

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In its Brief in Opposition, Respondent U.S. Industries, Inc. questions the timeliness of this Cross-Petition for a Writ of Certiorari. Respondent alleges that Petitioners failed to satisfy the requirements of 28 U.S.C. § 2101(c) in that Petitioners did not file a Motion for Rehearing with the Court of Appeals, and the Petition was filed more than ninety (90) days from the decision of the Court of Appeals. Respondent's reliance on *Federal*

Trade Commission v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206 (1952), is misplaced. There, neither the Petitioner, nor the Respondent had filed a motion for rehearing with the Court of Appeals. Here, Respondent filed a timely Motion for Rehearing with the Court of Appeals. The filing by Respondent of its Motion for Rehearing suspended the finality of the judgment of the Court of Appeals. *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441, 445 (1974). Respondent's Motion for Rehearing was denied on September 13, 1977, and Petitioners timely filed this Cross-Petition for a Writ of Certiorari within ninety (90) days of that date. Accordingly, this Cross-Petition for a Writ of Certiorari is timely.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned authority, hereby certify that on this ____ day of January, 1978, three (3) copies of the foregoing Reply Brief of Petitioners has been served upon all counsel of record, below listed, by depositing same in the United States Mail, postage prepaid.

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